2026:DHC:8478

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order reserved on: **28.09.2026**
Order delivered on: **29.09.2026**

CNR No. DLHC010120162026

\+ O.M.P.(COMM) 147/2026, I.A. 8250/2026 & I.A. 24128/2026

CONSOLIDATED CONSTRUCTION CONSORTIUM LTD .....Petitioner

versus

OIL AND NATURAL GAS CORPORATION LTD ....Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Rajshekhar Rao, Senior Advocate with Mr. Anandh Venkatramani, Mr. Ajay Sabharwal, Mr. J. Suresh, Mr. Sriam, Ms. Anjali Agrawal, Mrs. C.B. Thajaswini, Mr. Devvrat Singh and Mr. Anirudh Sundar, Advocates.

For the Respondent: Mr. Chetan Sharma, ASG with Mr. Abhishek Puri, Ms. Surbhi Gupta, Mr.Amit Gupta, Mr. R.V. Prabhat, Mr. Shubham Sharma, Mr. Naman and Mr. Sahil Grewal, Advocates.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

O R D E R

TUSHAR RAO GEDELA, J.

I.A.8250/2026 (Application under Section 36(3) of the Arbitration and Conciliation Act, 1996)

1. The petitioner seeks to press I.A. 8250/2026 which is an application under Section 36(3) of the Arbitration and Conciliation Act, 1996 (hereinafter referred





to as the "*Act*"), particularly in respect of prayers (b), (c) and (d), which are extracted hereunder:

> *"b) Direct the Respondent to release the Liquidated Damages Bank Guarantee i.e. Bank Guarantee bearing number 0009BG00063913 for a sum of Rs. 54,88,37,000/- issued by ICICI Bank;*
> *c) Direct the Respondent to release the Performance Bank Guarantee i.e., Bank Guarantee bearing number 2010380IBG0084 for a sum of ₹ 21,57,15,046/- issued by IDBI Bank;*
> *d) Direct the Respondent to release the Interest Bank Guarantee i.e., Bank Guarantee bearing number 0532IGPER002116 for a sum of 78,96,79,535/- issued by Bank of Baroda."*

2. In respect of prayer clause (a), which sought stay on the operation of the impugned award dated 29.11.2025, this Court had by the order dated 27.03.2026, directed that subject to the petitioner keeping the Bank Guarantees (hereinafter referred to as the "*BGs*") alive, the impugned award to the extent of the findings recorded against the petitioner are stayed till the next date of hearing. The said interim orders continue till date.

3. Mr. Rajshekhar Rao, learned senior counsel for the petitioner stated that the direction passed by this Court on 27.03.2026 for keeping the said BGs alive, is proving to be onerous for the reason that every time the BGs are renewed, the petitioner incurs a cost of Rs.45 lakhs approximately. Under instructions, he stated that the petitioner, in order to obviate the prohibitive costs incurred by it for the renewals of the BGs, as also to secure the interests of the respondent, is ready and willing to deposit a sum of Rs.43,14,30,091/- as awarded by the learned Arbitral Tribunal in respect of the Liquidated Damages (hereinafter referred to as the "*LD*") to the respondent, and a sum of Rs.8,96,79,535/- crores on account of release of interest BG, in this Court.

4. He would state that in lieu of such deposit, this Court may direct the respondent to release the BG for the LD amounting to a sum of Rs.54,88,37,000/- crores as also the Performance Bank Guarantee (hereinafter referred to as the "*PBG*") for a sum of Rs.21,57,15,046/- crores, and Interest Bank Guarantee (hereinafter referred to as the "*IBG*") for Rs.8,96,79,535/-.

5. He would submit that respondent seeks to encash a total sum of Rs.63,85,16,535/- crores, which is a sum total of Rs.54,88,37,000/- crores + Rs.8,96,79,535/- crores, towards BG for LD as per Clauses 6.3.2 and 6.3.4, and the PBG of Rs.21,57,15,046/- crores as per Clause 3.3.3 of the contract dated 18.03.2010.

6. He would contend that the learned Arbitral Tribunal in para 438 had clearly held that the respondent was entitled to invoke and encash BG to the extent of Rs.43,14,30,091/- crore on account of being entitled for LD. So far as the PBG is concerned, he would submit that para 518 of the impugned award, the learned Tribunal had allowed the release of the PBG subject to ONGC's right to set off of the sum of Rs.1,20,24,691/- crores awarded to ONGC. He would further state that the PBG may also be permitted to be released after deduction of Rs.1,20,24,691/- crores as awarded by the learned Arbitral Tribunal to the respondent.

7. Learned senior counsel would refer to the amendment of the contract dated 30.07.2012 to Clause 6.3.4, which required the petitioner to furnish a BG towards the maximum amount of LD applicable with 12% interest p.a. on the LD amount. According to him, the PBG was to be kept valid till the final settlement is arrived at either mutually or through conciliation/arbitration or by Court. In that context, learned senior counsel would contend that since, the

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arbitration proceedings have resulted in an award which grants Rs.43,14,30,091/- to the respondent, and Rs.1,20,24,691/- crores to the respondent in respect of PBG, if the petitioner would deposit the LD amounting to Rs.43,14,30,091/- crores, and additionally, a sum of Rs.8,96,79,535/- crores towards interest BG, the respondent will suffer no prejudice or any financial incapacity on account of its challenge to the rejection of the counter claims by the impugned arbitral award. In particular, learned senior counsel invited attention to the penultimate portion of the Clause 6.3.4 of the contract to submit that the said clause itself envisaged that whatever amount of LD was settled, the same would be remitted by the petitioner to respondent.

8. He would contend that since the arbitral award has granted respondent LD of Rs.43,14,30,091/- crores, the deposit of the said amount in this Court would be a complete compliance of Clause 6.3.4 of the contract.

9. In support of his contentions regarding the PBG, learned counsel referred to Clauses 3.2.2 and 3.4.4 of the contract to submit that once the petitioner has completed its contractual obligations in terms of the said clauses, retention of the said PBG is not justifiable. He would also submit that in terms of Clause 5 of the said contract, the respondent has already furnished a completion certificate, which would even otherwise entitle the release of PBG in favour of the petitioner.

10. Learned counsel also pointed to the application of the interim application, filed by the respondent in O.M.P.(COMM.)281/2026, whereby apart from seeking stay of the impugned award dated 29.11.2025, the respondent has also sought permission to encash and release the amount under the BG for LD, and other BGs. He would submit that the prayer sought by the respondent in its





interim application, would somewhat get complied with in case the prayers of the petitioner in the instant application, particularly prayer clauses (b), (c) and (d) is allowed. Learned counsel referred to paragraphs of the impugned award to submit that the learned arbitrator after having dealt with the disputes in detail has recorded findings, basis whereof, the petitioner seeks modification of the order dated 27.03.2026 passed by this Court, or passing orders by this Court on prayer clauses (b), (c) and (d) of the application.

11. Mr. Chetan Sharma, learned ASG assisted by Mr. Abhishek Puri, learned counsel for the respondent submitted to the contrary.

12. Learned ASG would contend that the prayers sought in Section 34 read with Section 36(3) are limited, and circumscribed in its operation. In that, a party cannot seek any mandatory injunction and can only restrict itself to seeking restraint or stay of the operation of the arbitral award subject to conditions the Court may impose. That by itself clearly would indicate, according to learned ASG, that a positive direction of release of BGs, etc., cannot be sought in such a narrow scope or a circumscribed provision of law.

13. According to ASG, such prayers could have been sought in an application under Section 9 or in a petition seeking enforcement of the award under Section 36 of the Act. He would contend that the petitioner has admittedly not preferred a petition for enforcement under Section 36 of the Act. That apart, he would contend that the petitioner has concealed that, it did in fact, approach this Court under Section 9 of the Act in a petition bearing O.M.P.(I) (COMM.) 540/2025 seeking almost identical prayers, which was not acceded to by this Court. He would submit that the said petition was disposed of on the statement of the petitioner herein that the concerned BGs would be extended, and also noted the





statement of the counsel for the respondent that in the event BGs are extended, the e-mail dated 12.12.2025 shall not be acted upon by respondent. The petition was disposed of on the aforesaid aspect.

14. He would contend that once the petitioner has already availed of the appropriate remedy and did not find favour from the Court, identical prayers under the provisions of Section 36(3) of the Act would clearly not be available to the petitioner, since it would be re-agitation of issues, which were not acceded to previously by this Court under the appropriate provision.

15. He relied on the judgement of the Supreme Court in ***Home Care Retail Mart Pvt. Ltd. vs. Haresh N. Sanghavi, 2026 SCC OnLine SC 670,*** particularly para 42, in support of his submissions. According to him, the ratio laid down in the aforesaid judgement clearly proscribed any orders in the nature of what has been sought for by the petitioner in prayer clauses (b), (c) and (d) of the said application.

16. He also relied on the judgement of the Bombay High Court in ***ONGC v. Swiber offshore Construction PTE Limited,*** COMM ARBITRATION PETITION NO.17832 of 2026 dated 15.06.2026, and read in detail the relevant paragraphs. He would stoutly contend that the facts arising in the present petition are almost identical to the one which arose before the Bombay High Court in the case of ***ONGC*** (*supra*) and as such the ratio in para 86 would be applicable to the facts of the present case. He, however, fairly stated that the said petition was filed by the respondent under Section 9 of the Act, and even then, the only order passed by the Bombay High Court was to direct renewal and extension of BG by the respondent therein, and did not allow encashment of the same by the respondent. In other words, he would submit that no orders other than restraining





or staying the operation of the arbitral award can at all be passed by any Court in a petition under Section 34 or an application under Section 36(3) of the Act.

17. Learned ASG would submit that this is a fetter in law precluding this Court from passing any orders, interim or otherwise, on principles of equity.

18. However, learned ASG stated that in case the petitioner is willing to renew the BGs and keep them valid till the time that this Court disposes of both the petitions under Section 34 of the Act filed by both the parties, the respondent may accede to refrain from encashing the said BGs.

ANALYSIS AND CONCLUSION

19. This Court has heard the arguments of Mr. Rajshekhar Rao, learned senior counsel for the petitioner, and Mr. Chetan Sharma, learned ASG assisted by Mr. Abhishek Puri for respondent, and examined the material on record.

20. The gravamen of the submissions of Mr. Rajshekhar Rao, learned senior counsel for the petitioner is premised on the fact that in lieu of grant of prayer clauses (b), (c) and (d) in favour of the petitioner, the petitioner shall deposit before this Court a sum of Rs.43,14,30,091/- crores, and a sum of Rs.8,96,97,535/- crores apart from being agreeable to set off of Rs.1,20,24,691/- awarded in favour of respondent towards risk and costs under counter claim no.7 by the learned Arbitral Tribunal, and release of the balance amount of PBG for a sum of Rs.21,57,15,046/- in favour of the petitioner. This, according to him, would secure the interests of the respondent during the pendency of the present petition.

21. The aforesaid arguments had appealed to this Court and appeared attractive inasmuch as, the said offer and proposition seemed to be aligned with the principles of equity. It is not disputed that the learned Arbitral Tribunal after





detailed examination of facts has awarded a sum of Rs.43,14,30,091/- on account of LD out of a sum of Rs.54,88,37,000/- forming BG of LD. Similarly, the learned Arbitral Tribunal has also granted respondent a right to set off of Rs.1,20,24,691/- on account of the counter claim no.7 against PBG of Rs.21,57,15,046/-. The deposit of Rs.8,96,79,535/- crores against release of the entire amount as awarded by the learned Arbitral Tribunal to secure the interest of respondent to that extent also appealed to this Court. It appeared that the respondent would be insulated and kept secured on account of the amounts awarded in favour of the respondent.

22. While the above may be true, however, what is to be seen and examined is whether in exercise of powers under Section 36(3) of the Act, any order in the nature as sought could at all be passed by this Court particularly, bearing in mind that the petitioner has to incur huge expenses on account of extension of validity of the subject BGs. Section 36 of the Act is extracted hereunder:

> *"[**36. Enforcement***
>
> *(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.*
>
> *(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with provisions of sub-section (3), on a separate application made for that purpose.*
>
> *(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:*

PROVIDED that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908):]

[PROVIDED FURTHER that where the Court is satisfied that a prima facie case is made out,-

(a) that the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

Explanation: For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.]

23. From a reading of the said section, it appears that a party impugning the Arbitral Award is entitled to file an application seeking stay of the operation of the Arbitral Award in accordance with the provisions of sub-section (3). Sub-section (3) contemplates stay of the operation of the Arbitral Award under challenge by the Court subject to conditions it may deem fit for grant of stay of the operation of such award. Plainly, sub-section (3) as also its proviso do not appear to provide any room for the Court to grant positive orders in terms of mandatory injunction. It is to be borne in mind that sub-section (3) is a part of Section 36, which is a provision for enforcement of the Arbitral Award, that too, in accordance with the provisions of the Code of Civil Procedure, 1908, as if it were a decree. To the mind of this Court, it appears that the relief sought in prayer clauses (b), (c) & (d) are akin or similar to enforcement of the award,

rather than a relief that can be sought under the provisions of Section 34 or 36(3) of the Act. It is not disputed that the petitioner has not filed any petition till date seeking enforcement of the award. In which case, the petitioner could have availed of provisions under Order XXI of the CPC for seeking various reliefs which may be similar to the ones sought in prayer clauses (b), (c) & (d) of the instant application. Thus, this Court is not convinced that the relief sought in prayer clauses (b), (c) and (d), in the manner as sought by the petitioner, that too, under Section 36(3) of the Act, can be granted.

24. The judgement of the Supreme Court in ***Home Retail*** *(supra)* is for the proposition that even an unsuccessful party to the arbitration proceedings can avail of the provisions of Section 9 of the Act to seek appropriate interim protection order. The said decision was relied upon to support the contention that the relief sought in prayers (b), (c) and (d) of the stay application cannot be sought or granted by this Court under the provisions of section 36(3) of the Act. The Supreme Court had examined the interplay between section 34, 36(2) and 9 of the Act in the context of whether an unsuccessful party is entitled to seek interim measures of protection under section 9 of the Act. Having examined the law, it was held that an unsuccessful party too is entitled to avail the remedy under Section 9 of the Act. Thus, the reliance for the contention raised by the respondent to the facts of this case may not be available.

25. This Court is of the considered opinion that the scope of the provisions of sub-section (3) of Section 36 cannot be expanded to include prayers and reliefs which can be sought and enforced under Section 36(1) read with Order XXI of the CPC, 1908. In case such a proposition is acceded to, it may render provisions

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of Section 36(1) and Order 21 of the CPC, 1908, and its rules otiose or nugatory. This cannot be countenanced.

26. In the garb of an application seeking stay/restraint of the impugned award, enforcement, by whatsoever nomenclature cannot be permitted. Apart from the above, it is not disputed that the petitioner had approached this Court in O.M.P.(I) (COMM) 540/2025 under Section 9 of the Act seeking almost identical reliefs, which were not acceded to by this Court *vide* order dated 12.01.2026. For completeness, the order is extracted hereunder:

> *"1. The present petition has been filed seeking following reliefs:*
>
> *(a) Injunct and restrain the Respondent from invoking the Liquidated Damages Bank Guarantee till 31.03.2026 (i.e. the Bank Guarantee bearing number 0009BG060631913 for a sum of Rs. 54,88,37,000/- issued by ICICI Bank);*
>
> *(b) Injunct and restrain the Respondent from invoking the Performance Bank Guarantee till 31.03.2026, (i.e. the Bank Guarantee bearing number 20103801BG0084 for a sum of ₹21,57,15,046/- issued by IDBI Bank);*
>
> *(c) Injunct and restrain the Respondent from invoking Interest Bank Guarantee till 31.03.2026 (i.e. Bank Guarantee bearing number 0532IGPER002116 for a sum of ₹8,96,79,535/- issued by Bank of Baroda);*
>
> *(d) Direct the Respondent to release the Liquidated Damages Bank Guarantee till 31.03.2026 (i.e. the Bank Guarantee bearing number 0009BG060631913 for a sum of Rs. 54,88,37,000/- issued by ICICI Bank);*
>
> *(e) Direct the Respondent to release the Performance Bank Guarantee till 31.03.2026, (i.e. the Bank Guarantee bearing number 2010380IBG0084 for a sum of 821,57,15,046/- issued by IDBI Bank);*
>
> *(f) Direct the Respondent to release the Interest Bank Guarantee till 31.03.2026 (i.e. Bank Guarantee bearing number 05321GPER002116 for a sum of 28,96,79,535/- issued by Bank of Baroda)."*
>
> *2. Mr. Rajshekhar Rao, learned Senior Counsel appearing on behalf of the petitioner submits that the only concern of the present petitioner is that the e-*

mail dated 12.12.2025 has been written by the respondent to the petitioner whereby the petitioner had been asked to ensure the extension/amendment of Bank Guarantees (BGs) on or before 26.12.2025, failing which the respondent shall initiate action to invoke the BGs.

3. He submits that the Liquidated Damages BG was extended by the applicant for a period of three months till 31.03.2026, whereas the Performance BG is still valid till 31.01.2026. He submits that a request has already been made for further extension of three months and the said Performance BG is likely to be extended till 30.04.2026.

4. He submits that insofar as the Interest BG is concerned, a request for extension of the same has also been made, and it will be extended till 31.03.2026.

5. Mr. Abhishek Puri, learned counsel appearing on behalf of the respondent/ONGC submits that in the event the BGs are extended as stated by Mr. Rao, the e-mail dated 12.12.2026 shall not be acted upon, however, this is without prejudice to the rights and contentions of the parties under the award.

6. The statement of Mr. Puri is taken on record and the respondent is bound down to the same.

7. The petition, alongwith pending application, is disposed of in the aforesaid terms."

27. For the aforesaid reasons, this Court is unable to agree with the equitable considerations advanced by Mr. Rajshekhar Rao, learned senior counsel for the petitioner, and is unable to accede to the reliefs sought in prayer clauses (b), (c) & (d). To the said extent, the application is disallowed.

28. That said, since the BGs are likely to lapse, the petitioner is granted 1 week to extend the validity of the said BGs. Mr. Rao, learned senior counsel had also raised an issue as to why the costs incurred by a party on renewal of BGs in such circumstances where the party is ready to secure the interests of the other party, cannot be mulcted on the other party, if the first party is successful in the *lis*?

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29. The said question does keep cropping up and may require consideration. The said question is left open for the time being.

30. Accordingly, the application stands disposed of.

O.M.P.(COMM) 147/2026

31. List on the date already fixed i.e. 17.11.2026.

TUSHAR RAO GEDELA
(JUDGE)

SEPTEMBER 29, 2026
yrj/kct/rl